

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION**

**UNITED STATES LIFE INSURANCE)
COMPANY OF AMERICA IN THE)
CITY OF NEW YORK,)**

Plaintiff,)

v.)

CV : 3:07-cv-01071-WKW

RONNIE JAMES HERRING, MD,)

Defendant.)

**PLAINTIFF/COUNTERCLAIM DEFENDANT UNITED STATES LIFE
INSURANCE COMPANY OF AMERICA IN THE CITY OF NEW YORK'S
RESPONSE TO COURT'S SHOW CAUSE ORDER**

United States Life Insurance Company of America in the City of New York (U.S. Life) hereby respectfully responds to the Court's February 19, 2008 Show Cause Order as follows:

1. This action was filed by U.S. Life on December 7, 2007 in order to obtain a judicial declaration that, based upon the material misrepresentations and omissions made by Herring in his insurance policy application, U.S. Life was entitled to rescind Policy Certificate Number 9500161094.

2. On December 28, 2007, Herring filed a counterclaim asserting various common-law claims including fraud, breach of contract and bad faith.

3. Upon learning that Herring filed a petition of relief under Chapter 7 of Title 11 of the United States Code in the United States Bankruptcy Court for the Northern District of Alabama on February 8, 2008, U.S. Life promptly suggested to the Court that this action was automatically stayed pursuant to 11 U.S.C. § 362.

4. On February 19, 2008, the Court entered an Order directing the parties to show cause why the action should not be dismissed without prejudice, to the parties' right to petition to reinstate the action.

5. On February 26, 2008, in the bankruptcy proceeding, Herring filed a Motion to Convert Case to Chapter 13.

6. On February 27, 2008, in the bankruptcy proceeding, Herring's current attorney filed an application to serve as Herring's attorney for the counterclaims asserted in the instant case.

7. From all appearances, Herring's counsel is seeking to promptly obtain the appropriate relief in order to pursue the counterclaims pending in this action. As such, and for purposes of judicial economy and convenience of the parties, American General respectfully requests that the Court refrain from dismissing the case. A brief continuance of the stay instead of a dismissal should provide the parties with ample time to be in a position to continue the instant litigation without any party having to seek reinstatement or, if necessary, the time, cost and fees associated with other procedural steps.

Respectfully submitted by,

/s/ Thomas J. Butler

Michael D. Mulvaney

Thomas J. Butler

Grace L. Kipp

Attorneys for Plaintiff United States
Life Insurance Company of America
in the City of New York

OF COUNSEL

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing pleading has been served upon the following listed persons by Electronic Mail, this the 29th day of February, 2008.

Christopher E. Sanspree
SANSPREE & McRIGHT, LLC
603 Martha Street
Montgomery, Alabama 36104

/s/ Thomas J. Butler
OF COUNSEL